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VIA E-MAIL TRANSMISSION

June 24, 2014

Richard Haymaker
Chief Legal Counsel
Illinois Liquor Control Commission
100 West Randolph Street
Suite 7-801
Chicago, Illinois 60601

Re: Proposed Private Label Rule 100.445

Dear Mr. Haymaker:

This letter is intended to supplement and provide additional support for our previous letter of May 30, 2014, written on behalf of our client, Cooper's Hawk Production, LLC ("Cooper's Hawk"), in opposition to the adoption of the proposed Private Label Rule, which I believe has been renumbered as Rule 100.445 ("Rule").

The Commission asserts that the statutory authority from the Rule arises from Section 5/6-17.1 of the Liquor Control Act ("Act"). As we previously stated in our letter of May 30, 2014, it is our view that Section 5/6-17.1 does not provide any support whatsoever for the adoption of the Rule, let alone pertain to private labels. Rather, Section 5/6/-17.1 is intended only to generally require a distributor to service all retailers within its assigned territory and prohibits a distributor from concentrating solely on large accounts, those primarily in urban areas, or easy to reach accounts, to the detriment of smaller retailers or those located in outlying areas.

A review of the legislative history of Section 5/6-17.1 unequivocally supports this conclusion. Attached is Senate Transcript from May 21, 1993, when House Bill 2307 (which

gave rise to Section 5/6-17.1) was brought before the Illinois Senate. You will see that the legislative intent behind Section 5/6-17.1 was described as follows:

> "Now, the bill can be divided into three parts. It does three things. The first thing it does is it tries to prevent liquor distributors from discriminating against retailers. And in many parts of this State, particularly some downstate areas or in some areas where the small retailer is located, he has a hard time getting a distributor to distribute – to liquor to him. And it causes a problem, because it is illegal for one retailer to go buy liquor from another retailer. And so, someone like that is often forced, if he can't get distribution, to resort to an illegal act, or they can be put out of business. And what this bill does is it asks – or requires all distributors to service retailers without discrimination against any of them. It does not require retailers [sic] to go to every single retail outlet in their area. What it does, it requires them to call on them without discrimination." (Senate Transcript, House Bill 2307, pages 142-143 [emphasis added].)

Next, P.A. 91-0186 amended Section 5/6-17.1 in 1999 by replacing the term "beer" with "alcoholic liquor." Attached is the Senate Transcript from May 7, 1999, for House Bill 335 which gave rise to the amendment. Again, the intent behind the amendment was that "the distributor must service the retailer." (Senate Transcript, House Bill 335, page 46.)

The clear legislative intent of Section 5/6-17.1 was to ensure that distributors serviced all retailers within their territories and not discriminate against small retailers. It has nothing to do with requiring that private labels be offered for sale to every retailer.

It is well established under Illinois law that an administrative agency may not use its rules and regulations to expand the scope of legislation to include requirements not found in a statute. While the Commission's authority to enact rules is not disputed, the scope of those rules cannot contravene or extend the operation of the Act. Illinois case law is replete with cases which support this and other axiomatic principles:

1. A statute may not be altered or added to by exercise of power to make administrative rules and regulations thereunder;

2. An administrative body cannot extend or alter operation of a statute by exercise of its rule-making power;

3. To the extent a rule is in conflict with a statute, the rule is invalid;

4. Administrative rules interpreting a statute may neither limit nor extend the scope of that statute;

5. Administrative agencies cannot extend substantive provisions of legislative enactment or create substantive rights through exercise of their rule-making powers;

6. Administrative rules and regulations must be authorized by statute, and the statute may not be altered or added to by making of administrative rules and regulations thereunder; and

7. An administrative agency delegated rulemaking authority has no power to make law, but instead is limited to creating rules to effectuate the will of the legislature as expressed in the relevant statute.

By adopting the Rule, the Commission would, in our opinion, violate each of the above principles and engage in improper rule-making and legislating. I ask that you share this supplemental letter and attached legislative history with the Chairman and the other members of the Commission for their consideration along with our letter of May 30, 2014.

We would also like to obtain copies of any written comments, both pro and con, submitted by others to the Commission as to the proposed Rule. Please advise if we may obtain the same.

Unfortunately, a representative of our office will not be able to attend the Commission's next meeting on June 26, 2014 in Springfield, but we will be in attendance for the August 4, 2014 meeting, if the matter is to be heard then.

Very truly yours,

SIEGEL & MOSES, P.C.

By: _____
Zubin S. Kammula, Esq.

ZSK/eka
Attachments

CC: Gloria L. Matterre, Executive Director
Ivan Fernandez, Assistant Director
Michael A. Moses, Esq.
Morton Siegel, Esq.

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